IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

TRC.No. 476 of 2001

ORDER DATED 9.8.2000 IN T.A.261/2000 OF KERALA AGRICULTURAL INCOME TAX & APPELLATE TRIBUNAL, ADDL. BENCH-I, PALAKKAD.

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REVISION PETITIONER/APPELLANT:

PALAKKAD DISTRICT GOLD WORKERS-
-INDUSTRIAL CO-OPERATIVE SOCIETY LTD.,
(VISWASILPI JEWELLERY),
PALAKKAD,
REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.P.V.BABY

RESPONDENT/RESPONDENT:

STATE OF KERALA.

BY SPL.GOVT.PLEADER SRI. MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 20/11/2007, ALONG WITH TRC NO.477 OF 2001 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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T.R.C.Nos. 476, 477, 478, 479 & 480 of 2001

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Dated this the 20th day of November, 2007.

ORDER

H.L.DATTU, CJ,

A simple issue arises in all these revision petitions for our consideration and decision. The issue is, whether the assessee is eligible and entitled for exemption on the purchase turnover of old gold jewellery, which is used in the manufacture and sale of the gold jewellery.

2. In these revision cases, we are concerned with the assessment years 1993 -1994 to 1997-1998.

3. The undisputed facts are, that, the assessee is a Workers' Co-operative Society. This is evidenced by the certificate of registration produced by the assessee along with the revision case papers. The assessee purchases old gold jewellery and manufactures jewellery and effects sale of the said jewellery through its retail outlet, “Viswasilpi Jewellery” at Palakkad.

4. In the return filed by the assessee for the assessment years in question, the assessee had claimed exemption from payment of tax under the Kerala General Sales Tax Act ('the Act' for short) both on its purchases as well as on sales. The assessing authority, while completing the assessment for the years in question had granted exemption both on the sales turnover and the purchase turnover of the assessee. Thereafter it initiated proceedings under Section 19 of the Act to re-assess the dealer, on the ground, that the assessee was entitled for exemption only on sales turnover and not on the purchase turnover.

5. The findings and the conclusions reached by the assessing authority in the revised assessment order was confirmed by the First Appellate Authority as well as by the Tribunal. The assessee, being aggrieved by all these orders is before us in these Tax Revision Cases. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "(i) Whether the findings of the Tribunal is sustainable in view of the clear indications in SRO.970/80 and SRO. 1727/93.
>
> (ii) Whether the revision petitioner is entitled to get exemption from the sales tax and purchase tax for the products produced by the revision petitioner in view of the various clauses contained in SRO. 970/80 and SRO. 1727/93 issued by the Government."

6. Sri. P.V.Baby, learned counsel appearing for the assessee contended that in view of the language employed in the notifications, SRO 970/80 and SRO 1727/93, the assessee is entitled for exemption from payment of tax both on its purchase and sales turnover and therefore submits that the Tribunal was not justified in confirming the orders passed by the assessing authority.

7. Sri. Muhammed Rafiq, learned Government Pleader appearing for the revenue ably justified the impugned orders passed by the assessing authority as well as by the Tribunal.

8. In order to answer the issues raised in these Tax Revision Cases, reference to the notifications issued by the State Government in exercise of its powers under Section 10 of the Act requires to be noticed. Omitting what is unnecessary for the purpose of the case, the said notifications are extracted. They are as under:

"**SRO No.970/80** hereby make an exemption in respect of the tax payable under the said Act. On the turnover of the sale of the following handicraft goods produced in Kerala through the Handicraft Development Corporation of Kerala Ltd. And the Co-operative Societies in the States subject to the condition that the tax (payable) if any already collected by the said Corporation and Co-operative Society by any of sales tax on their rate shall be paid over to government and that the sales tax (if any already paid by them to Government shall not be refunded).

X x x x x x x x x x

27. Jewellery.

X x x x x x x x x x

This notification shall be deemed to have come into force with effect from 1st April, 1979 (GO MS74/80/TD dt. 29.9.80 in K.G.No.42 dt.21.10.1980)"

The other notification which requires to be noticed is SRO. 1727/93 and the Schedule appended thereto.

"**S.R.O. No.1727/93** :- In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax, 1963 (Act 15 of 1963) and in supersession of the notifications mentioned in Schedule I, the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption.-

I in respect of the tax payable under the said Act;

(1) on the turnover of sale or purchase, as the case may be, of goods mentioned in Schedule II;

(2) by dealers mentioned in column (2) of Schedule III, on their turnover of sale or purchase, as the case may be, of goods mentioned in column (3) against them, subject to the conditions and restrictions, if any, specified in column (4) thereof, against each;

(3) by Co-operative Societies specified in column (2) of Schedule

IV on their turnover of sale or purchase, as the case may be, of goods specified in column (3) subject to the conditions, if any, specified in column (4) thereof, against each;"

Schedule IV

CO-OPERATIVE SOCIETIES, THE TURNOVER OF SALE OR PURCHASE OF WHICH IS EXEMPT UNDER SUB CLAUSE (3) OF CLAUSE I

Sl. No.	Name of the Society and the	Description of the goods turnover which is exempted	Conditions
(1)	(2)	(3)	(4)
1.	All Co-operative Societies	(i)On the sale of Note Books (ii) On the sale of cooked food served in hotels and restuarants	Nil
2.	Co-operative Societies of patients in leprosy Hospitals in the State	On the sale of all goods	Nil
3.	Co-operative Societies of potters	On the basis of sale of goods manufactured by them within the State	Nil
4.	Co-operative Societies of workers	On the sale of :- (1) Bamboo mats and bamboo other than bamboo ply. (2) Granite products. (3) Handicrafts goods' (4) Rattan goods, and (5) Screw pine mats & baskets manufactured by them within the State.	Nil

Explanation:- A Co-operative Society in which not less than 90% of the members are workers shall be deemed to be a Co-operative Society of workers.".

9. S.R.O. 970/80 issued by the State Government provides for exemption in respect of tax payable under the Act on the turnover of sale of handicraft goods produced in Kerala by the Handicraft Development Corporation of Kerala Limited and the Co-operative Societies in the State, subject to the condition that the tax (payable), if any, has already been collected by the said Corporation and the Co-operative Society by any of the sales tax on their own rate shall be paid over to Government. In the said

Notification, while enumerating the handicraft goods, the State Government has included the item 'jewellery' also. Therefore jewellery is an item, which is included under the expression handicraft goods.

10. The State Government in supersession of the notifications mentioned in Schedule I, in the public interest, has issued S.R.O. 1727/93. By the said notification, exemption is granted in respect of the tax payable under the provisions of the Act, firstly, on the turnover of sale or purchase of goods mentioned in Schedule II to the notification. Dealers mentioned in column (2) of Schedule III are also entitled for certain exemptions. The exemption is on the turnover of sale or purchase as the case may be of the goods mentioned in column (3) subject to certain conditions and restrictions, if any, specified in column (4) of Schedule III to the notification.

11. Column (3) of the said notification provides for exemption on the sale or purchase turnover of the goods specified in column (3) if the sale or purchase is effected by Co-operative Societies. This is once again subject to the conditions and restrictions specified in column (4) of Schedule IV to the notification.

12. Then we come to Schedule IV appended to the notification.

13. Serial No. (4) of Schedule IV to the notification provides for Co-operative Societies of workers. Column (3) of the said notification provides for description of goods and the turnover, which is exempted. In the case of Co-operative Societies of workers, what is exempted from payment of tax is on the sale of bamboo mats and bamboo products other than bamboo ply; granite products; handicraft goods; rattan goods; and screw pine mats and baskets manufactured by them within the State.

14. It is now well settled, that exemption notification requires to be

strictly construed by the courts. Once, of course, the notification is found applicable to a dealer, full effect must be given to it.

15. Keeping in view both the notifications, let us analyze the fact situation.

16. The assessee is a Co-operative Society of workers. This is not in dispute. The assessee effects purchase of old gold jewellery and thereafter manufactures jewellery. This is also not in dispute. In view of the inclusion of the jewellery within the meaning of the expression 'handicraft goods' by the State Government while issuing SRO. 970/80, it can be easily said that manufacture of jewellery is also an item falling within the meaning of the expression 'handicraft goods'.

17. The notification issued by the State Government in SRO. 1727/93 provides different types of exemptions for different types of dealers under the Act. In the instant case, we are concerned with exemption provided to a Co-operative Society of workers. Therefore, what requires to be seen by us is Serial No.4 and column (3) of the notification SRO 1727/93. Schedule IV appended to the notification, apart from others, provides for certain exemptions to the Co-operative Societies of workers. Column (3) of the said schedule specifically provides exemption on the sales turnover of a Co-operative Society of workers on the sale of Handicraft Goods also.. That only means that the Co-operative Society of workers are not entitled for exemption on the purchase turnover of either bamboo mats or bamboo products, granite products or handicraft goods.

18. Strictly applying the notifications issued by the State Government, the assessing authority, while completing the re-assessment proceedings has granted

exemption only on the sales turnover of the assessee/Co-operative Society of workers. The findings and conclusions reached by the assessing authority, in our opinion was rightly confirmed by the First Appellate Authority and the Tribunal.

19. Having analyzed the notifications on which reliance is placed by the learned counsel for the assessee, we are of the opinion that none of the authorities under the Act nor the Tribunal has either decided the question of law erroneously or has failed to decide the question of law raised by the assessee. In that view of the matter, while confirming the findings and conclusions reached by the Tribunal, the Tax Revision Cases filed by the assessee requires to be rejected and accordingly it is rejected. The questions of law framed by the assessee requires to be answered against the assessee and in favour of the revenue.

Consequently the stay petitions in all the Tax Revision Cases are dismissed.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/dk.